

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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AMERICAN ZURICH INSURANCE  
COMPANY and ZURICH AMERICAN  
INSURANCE COMPANY,

Plaintiffs,

vs.

Case No. 20-cv-5026

J. CRISMAN PALMER and GUNDERSON,  
PALMER, NELSON & ASHMORE, LLP,

Defendants.

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Deposition via Zoom of: COLIN F. CAMPBELL  
Date: December 19, 2022  
Time: 2:16 p.m.

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APPEARANCES

Scott R. Hoyt  
Pia Hoyt, LLC  
Salt Lake City, Utah

Attorney for the Plaintiffs

Jason R. Sutton  
Boyce Law Firm, LLP  
Sioux Falls, South Dakota

Attorney for the Defendants

REPORTED BY: Audrey M. Barbush, RPR

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1 Mr. Molinar in finalizing it. Is there any other work  
2 that you performed in forming the opinions contained  
3 within Exhibit 115?

4 A Well, I've been through the report several times. You  
5 know, things take place over time, and if there was --  
6 something comes up, I'd need to review the materials to  
7 refresh my recollection.

8 I went back through all these materials in  
9 preparation for my deposition. If we had meetings  
10 where I was going to be talking with the client, I  
11 would have gone through materials to refresh my  
12 recollection again.

13 So I haven't just looked at them one time, is what  
14 I'm suggesting.

15 Q Is there any other work you recall performing in order  
16 to form your opinions in this matter?

17 A I don't know what you mean by "any other work."

18 Q You cite some legal resources in your opinion,  
19 specifically the Rules of Professional Conduct as well  
20 as the Restatement (Third) of Lawyers; is that right?

21 A Correct.

22 Q Is there any legal research that you performed other  
23 than the reference to the Rules of Professional Conduct  
24 and the Third Restatement of Lawyers?

25 A I don't think in terms of legal research. However, I

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1 have practiced for 45 years, and I have a great deal of  
2 experience with respect to a wide variety of cases.  
3 So, you know, I bring all of that into the opinions  
4 that I form, and work I've done in the past involves  
5 research with respect to the conduct of lawyers and  
6 what's expected of lawyers. I sat on the State Bar  
7 Ethics Committee, the State Bar here in Arizona, in the  
8 1980s. I was the chair of that committee. When I was  
9 a judge, I believe I also sat on the judicial ethics  
10 committee and taught judicial ethics. I have a lot of  
11 training and experience in what I believe goes into the  
12 concept of the standard of care.

13 Q The Rules of Professional Conduct that you cite in  
14 those reports, is that the model rule of professional  
15 conduct or is that the South Dakota specifically  
16 adopted rule?

17 A I would have to ask Mr. Molinar. I didn't -- he  
18 didn't -- I'm not aware of any substantial difference  
19 with respect to the standard of care rules he's citing  
20 between South Dakota and the rest of the country.

21 Q Did you perform any South Dakota-specific research in  
22 forming your opinions in this case?

23 A No, I don't think so. I've certainly read your  
24 expert's report.

25 Q Let's turn to page 6 of your report, please.

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1 A All right.

2 Q On page 6 through page 9 of the report, there are 22  
3 specific key facts that you have identified; is that  
4 right?

5 A Yes.

6 Q I recognize that Item 13's got a bunch of subparts, but  
7 at least there's 22 specific paragraphs, correct?

8 A On the report there's 22 specific paragraphs, correct.

9 Q What were you trying to memorialize in those 22  
10 specific paragraphs, or at least in that section of the  
11 report?

12 A Well, as it says at the beginning -- it says "Key  
13 Facts." So these are facts that -- I said it's my  
14 understanding these facts are or will be supported by  
15 competent evidence in the litigation, and then I've  
16 identified and relied upon the following facts. So I  
17 was trying to set forth key facts to the opinions I  
18 reached.

19 Q Are there any facts -- I'm sorry. I thought you had  
20 finished. Go ahead. I'm sorry.

21 A Well, I was just going to say, there may be additional  
22 facts I relied upon, also. But, you know, we'd have to  
23 talk about a particular subject, I guess.

24 Q Was it your intent in the Key Facts section to  
25 memorialize the most important facts that form the

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1 factual basis for your opinions?

2 A Well, it's exactly what it says: It was just to state  
3 the key facts with respect to the opinion.

4 Q How did you decide which facts to include in that  
5 section and which ones not to include?

6 A Well, my opinion in the case is that Mr. Palmer did not  
7 meet the standard of care with respect to his  
8 representation of Zurich, and these are facts that bear  
9 upon that opinion.

10 Q Are you aware of any other facts that you're relying  
11 upon to form the basis for that opinion that are not  
12 identified in pages 6 through 9 of your report?

13 A As I told you, I relied primarily upon the billing  
14 records and the emails and correspondence. You know,  
15 there may be certain -- you know, when you're looking  
16 at the course of events, you can look at the billing  
17 records and see when certain things happened. You can  
18 look at the billing records when the correspondence was  
19 done and then go to the correspondence. I mean, I'm  
20 sort of relying on everything I was given. These were  
21 key facts. That's all I'm trying to express.

22 Q Are you assuming, in forming your opinions in this  
23 case, that all 22 of the facts that you've identified  
24 are proven to be true?

25 A Well, we haven't had a trial in the case, of course.

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1 So I'm relying on emails, correspondence, billing  
2 records, depositions. There's some source for most all  
3 of these facts.

4 Q And I appreciate that. So in forming your opinions,  
5 you're assuming that the jury will agree with you that  
6 the evidence at trial proves all 22 of those facts,  
7 correct?

8 A I don't think they need to find all 22 of those facts.  
9 I mean, I haven't sat down and done a flowchart.

10 Q Was it your assumption that those facts will be proven  
11 to be true when you formed your opinions?

12 A Well, take an example. I see here we have Fact  
13 Number 19, which is that AZIC decided to retain Hinshaw  
14 Culbertson as primary counsel in the suit. I mean,  
15 that fact, whether it exists or not, doesn't affect my  
16 opinions in the case. As I think I told you earlier  
17 on, what Hinshaw did in the case doesn't really inform  
18 my opinions.

19 Q Can you tell me, as you're sitting here today, whether  
20 you assumed that all of the items within Number 1  
21 through 22 were, in fact, true as you describe them?

22 A This sets forth sort of an outline of what happened in  
23 the case, and in terms of being a chronological  
24 outline, I think it's an accurate chronological outline  
25 of the case.

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1 Q So back to my question. In forming your opinions, you  
2 were assuming that those facts are accurately stated in  
3 1 through 22, correct?

4 A I think we'd have to look at each one and go through  
5 it. For example, I just told you, like, 19, that they  
6 hired Hinshaw Culbertson has nothing to do with my  
7 opinions on the case, but it's part of the  
8 chronological summary of what happened.

9 Q Let me ask the question differently. Regardless of  
10 whether the fact is necessary for you in forming your  
11 opinions, did you assume that the evidence proved that  
12 each of the facts described in paragraphs 1 through 22  
13 are, in fact, as you stated them?

14 MR. HOYT: Asked and answered about 10 times.

15 MR. SUTTON: He hasn't answered the question once.  
16 He's danced around it. He can answer it again.

17 THE WITNESS: Well, I don't think the question is  
18 fair. For example, I have the opinion that Mr. Palmer  
19 did not meet the standard of care. One example of that  
20 is he had instructions from his client of what his  
21 client wanted him to do, none of which he did.

22 Now, the fact he received the instructions from  
23 the client I assume to be true because I've been given  
24 a document that was sent to him, and I've reviewed his  
25 deposition where he said he didn't do the things the

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1 and that then, in the case within the case, caused harm  
2 to the client because it prevented the client from  
3 taking advantage of the early settlement offer.

4 Is that a fair synthesis of what your opinions are  
5 in this case?

6 A It's a fair synthesis of my opinions with respect -- in  
7 the context of the case within the case, let's just  
8 say.

9 Q Are you opining that any of the other conduct by  
10 Attorney Palmer after the mediation caused any harm to  
11 Zurich?

12 A Well, I have the opinion that certain things, like not  
13 consulting with the client about affirmative defenses,  
14 fall below the standard of care. I do not have an  
15 opinion, after the settlement conference, with respect  
16 to the case within the case.

17 Q Tell me what things you are claiming Attorney Palmer  
18 did after the mediation that form the basis for your  
19 opinions he failed to comply with the applicable  
20 standard of care.

21 A Well, it's sort of like the whole issue of affirmative  
22 defenses, which are eventually -- as some of them are  
23 determined waived; I think the magistrate ruled on one  
24 of them -- again, I think it violates the standard of  
25 care to not discuss with the client and present to the

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1 client written documentation regarding the answer and  
2 your opinion with respect to raising certain  
3 affirmative defenses.

4 Q Any other opinions that you have regarding the  
5 affirmative defenses in which you claim Attorney Palmer  
6 failed to comply with the applicable standard of care?

7 A Well, I think, you know, he could have initiated -- the  
8 plaintiff initiated discovery requests. He certainly  
9 could have initiated discovery requests at the  
10 beginning of the case, but it's my understanding that  
11 you would want to squelch those or put them on hold if  
12 you wanted to take advantage of an early settlement  
13 offer from this particular attorney.

14 Q Are there any other opinions that you have that  
15 Attorney Palmer failed to comply with the applicable  
16 standard of care after the mediation?

17 A Nothing comes to mind right now, but you may ask a  
18 question that will jog my memory.

19 Q And will you let me know if I do?

20 A I'll try to.

21 Q Now, as I reviewed Sections 9 and 10 of your report --  
22 let me ask it this way: In forming your opinions in  
23 this case, what did you determine to be the appropriate  
24 standard of care?

25 A I think the standard of care is that you have to act

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1 caused harm to Zurich?

2 A Yes. Well, failure to discuss it with the client  
3 caused harm to Zurich because Zurich does not have the  
4 facts in writing that the attorney should give them  
5 that goes into their evaluation of the case for the  
6 adjuster to go seek settlement authority.

7 Q Okay. That's what --

8 A Now, if you're looking at the back end of the case and  
9 saying, Does it affect what's going to happen if you  
10 try it later on down the road after the settlement  
11 conference, I haven't formed an opinion on that.

12 Q Fair enough. And you don't have any opinions regarding  
13 the merits of any of those defenses, correct?

14 A I don't have an opinion with respect to the merits of  
15 them other than the fact that the lawyer has to discuss  
16 the merits of it with the client so the client has a  
17 complete file.

18 MR. SUTTON: I have no further questions.

19 MR. HOYT: I don't have anything.

20 MR. SUTTON: Mr. Campbell, thank you for your  
21 time. Have a good rest of your day, and on behalf of  
22 everybody in South Dakota, you guys are wise to be in  
23 the southern area.

24 (Discussion off the record.)

25 MR. SUTTON: Do you want to advise him on waiving